



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5759

by Rep. Jay Hoffman

SYNOPSIS AS INTRODUCED:

820 ILCS 130/2	from Ch. 48, par. 39s-2
820 ILCS 130/4	from Ch. 48, par. 39s-4
820 ILCS 130/5	from Ch. 48, par. 39s-5

Amends the Prevailing Wage Act. Provides that a public body shall specify in the call for bids that each bidder be a responsible bidder. Requires contractors and subcontractors to report the hours worked by minorities and females. Requires the Department of Transportation, the Capital Development Board, and the Illinois State Toll Highway Authority report that information to the General Assembly.

LRB099 17691 JLS 42050 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Prevailing Wage Act is amended by changing
5 Sections 2, 4, and 5 as follows:

6 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

7 Sec. 2. This Act applies to the wages of laborers,
8 mechanics and other workers employed in any public works, as
9 hereinafter defined, by any public body and to anyone under
10 contracts for public works. This includes any maintenance,
11 repair, assembly, or disassembly work performed on equipment
12 whether owned, leased, or rented.

13 As used in this Act, unless the context indicates
14 otherwise:

15 "Public works" means all fixed works constructed or
16 demolished by any public body, or paid for wholly or in part
17 out of public funds. "Public works" as defined herein includes
18 all projects financed in whole or in part with bonds, grants,
19 loans, or other funds made available by or through the State or
20 any of its political subdivisions, including but not limited
21 to: bonds issued under the Industrial Project Revenue Bond Act
22 (Article 11, Division 74 of the Illinois Municipal Code), the
23 Industrial Building Revenue Bond Act, the Illinois Finance

1 Authority Act, the Illinois Sports Facilities Authority Act, or
2 the Build Illinois Bond Act; loans or other funds made
3 available pursuant to the Build Illinois Act; loans or other
4 funds made available pursuant to the Riverfront Development
5 Fund under Section 10-15 of the River Edge Redevelopment Zone
6 Act; or funds from the Fund for Illinois' Future under Section
7 6z-47 of the State Finance Act, funds for school construction
8 under Section 5 of the General Obligation Bond Act, funds
9 authorized under Section 3 of the School Construction Bond Act,
10 funds for school infrastructure under Section 6z-45 of the
11 State Finance Act, and funds for transportation purposes under
12 Section 4 of the General Obligation Bond Act. "Public works"
13 also includes (i) all projects financed in whole or in part
14 with funds from the Department of Commerce and Economic
15 Opportunity under the Illinois Renewable Fuels Development
16 Program Act for which there is no project labor agreement; (ii)
17 all work performed pursuant to a public private agreement under
18 the Public Private Agreements for the Illiana Expressway Act or
19 the Public-Private Agreements for the South Suburban Airport
20 Act; and (iii) all projects undertaken under a public-private
21 agreement under the Public-Private Partnerships for
22 Transportation Act. "Public works" also includes all projects
23 at leased facility property used for airport purposes under
24 Section 35 of the Local Government Facility Lease Act. "Public
25 works" also includes the construction of a new wind power
26 facility by a business designated as a High Impact Business

1 under Section 5.5(a) (3) (E) of the Illinois Enterprise Zone Act.
2 "Public works" does not include work done directly by any
3 public utility company, whether or not done under public
4 supervision or direction, or paid for wholly or in part out of
5 public funds. "Public works" also includes any corrective
6 action performed pursuant to Title XVI of the Environmental
7 Protection Act for which payment from the Underground Storage
8 Tank Fund is requested. "Public works" does not include
9 projects undertaken by the owner at an owner-occupied
10 single-family residence or at an owner-occupied unit of a
11 multi-family residence. "Public works" does not include work
12 performed for soil and water conservation purposes on
13 agricultural lands, whether or not done under public
14 supervision or paid for wholly or in part out of public funds,
15 done directly by an owner or person who has legal control of
16 those lands.

17 "Construction" means all work on public works involving
18 laborers, workers or mechanics. This includes any maintenance,
19 repair, assembly, or disassembly work performed on equipment
20 whether owned, leased, or rented.

21 "Locality" means the county where the physical work upon
22 public works is performed, except (1) that if there is not
23 available in the county a sufficient number of competent
24 skilled laborers, workers and mechanics to construct the public
25 works efficiently and properly, "locality" includes any other
26 county nearest the one in which the work or construction is to

1 be performed and from which such persons may be obtained in
2 sufficient numbers to perform the work and (2) that, with
3 respect to contracts for highway work with the Department of
4 Transportation of this State, "locality" may at the discretion
5 of the Secretary of the Department of Transportation be
6 construed to include two or more adjacent counties from which
7 workers may be accessible for work on such construction.

8 "Public body" means the State or any officer, board or
9 commission of the State or any political subdivision or
10 department thereof, or any institution supported in whole or in
11 part by public funds, and includes every county, city, town,
12 village, township, school district, irrigation, utility,
13 reclamation improvement or other district and every other
14 political subdivision, district or municipality of the state
15 whether such political subdivision, municipality or district
16 operates under a special charter or not.

17 The terms "general prevailing rate of hourly wages",
18 "general prevailing rate of wages" or "prevailing rate of
19 wages" when used in this Act mean the hourly cash wages plus
20 annualized fringe benefits for training and apprenticeship
21 programs approved by the U.S. Department of Labor, Bureau of
22 Apprenticeship and Training, health and welfare, insurance,
23 vacations and pensions paid generally, in the locality in which
24 the work is being performed, to employees engaged in work of a
25 similar character on public works.

26 "Responsible bidder" means those individuals or firms

1 meeting the requirements of Section 30-22 of the Illinois
2 Procurement Code.

3 (Source: P.A. 97-502, eff. 8-23-11; 98-109, eff. 7-25-13;
4 98-482, eff. 1-1-14; 98-740, eff. 7-16-14; 98-756, eff.
5 7-16-14.)

6 (820 ILCS 130/4) (from Ch. 48, par. 39s-4)

7 Sec. 4. Ascertaining prevailing wage.

8 (a) The public body awarding any contract for public work
9 or otherwise undertaking any public works, shall ascertain the
10 general prevailing rate of hourly wages in the locality in
11 which the work is to be performed, for each craft or type of
12 worker or mechanic needed to execute the contract, and where
13 the public body performs the work without letting a contract
14 therefor, shall ascertain the prevailing rate of wages on a per
15 hour basis in the locality, and such public body shall specify
16 in the resolution or ordinance and in the call for bids for the
17 contract, that the general prevailing rate of wages in the
18 locality for each craft or type of worker or mechanic needed to
19 execute the contract or perform such work, also the general
20 prevailing rate for legal holiday and overtime work, as
21 ascertained by the public body or by the Department of Labor
22 shall be paid for each craft or type of worker needed to
23 execute the contract or to perform such work, and it shall be
24 mandatory upon the contractor to whom the contract is awarded
25 and upon any subcontractor under him, and where the public body

1 performs the work, upon the public body, to pay not less than
2 the specified rates to all laborers, workers and mechanics
3 employed by them in the execution of the contract or such work;
4 provided, however, that if the public body desires that the
5 Department of Labor ascertain the prevailing rate of wages, it
6 shall notify the Department of Labor to ascertain the general
7 prevailing rate of hourly wages for work under contract, or for
8 work performed by a public body without letting a contract as
9 required in the locality in which the work is to be performed,
10 for each craft or type of worker or mechanic needed to execute
11 the contract or project or work to be performed. Upon such
12 notification the Department of Labor shall ascertain such
13 general prevailing rate of wages, and certify the prevailing
14 wage to such public body.

15 (a-0.5) To effectuate the purpose and policy of this Act, a
16 public body awarding a contract for public work or otherwise
17 undertaking any public works shall specify in the call for bids
18 and shall require that each bidder be a responsible bidder.

19 (a-1) The public body or other entity awarding the contract
20 shall cause to be inserted in the project specifications and
21 the contract a stipulation to the effect that not less than the
22 prevailing rate of wages as found by the public body or
23 Department of Labor or determined by the court on review shall
24 be paid to all laborers, workers and mechanics performing work
25 under the contract.

26 (a-2) When a public body or other entity covered by this

1 Act has awarded work to a contractor without a public bid,
2 contract or project specification, such public body or other
3 entity shall comply with subsection (a-1) by providing the
4 contractor with written notice on the purchase order related to
5 the work to be done or on a separate document indicating that
6 not less than the prevailing rate of wages as found by the
7 public body or Department of Labor or determined by the court
8 on review shall be paid to all laborers, workers, and mechanics
9 performing work on the project.

10 (a-3) Where a complaint is made and the Department of Labor
11 determines that a violation occurred, the Department of Labor
12 shall determine if proper written notice under this Section 4
13 was given. If proper written notice was not provided to the
14 contractor by the public body or other entity, the Department
15 of Labor shall order the public body or other entity to pay any
16 interest, penalties or fines that would have been owed by the
17 contractor if proper written notice were provided. The failure
18 by a public body or other entity to provide written notice does
19 not relieve the contractor of the duty to comply with the
20 prevailing wage rate, nor of the obligation to pay any back
21 wages, as determined under this Act. For the purposes of this
22 subsection, back wages shall be limited to the difference
23 between the actual amount paid and the prevailing rate of wages
24 required to be paid for the project. The failure of a public
25 body or other entity to provide written notice under this
26 Section 4 does not diminish the right of a laborer, worker, or

1 mechanic to the prevailing rate of wages as determined under
2 this Act.

3 (b) It shall also be mandatory upon the contractor to whom
4 the contract is awarded to insert into each subcontract and
5 into the project specifications for each subcontract a written
6 stipulation to the effect that not less than the prevailing
7 rate of wages shall be paid to all laborers, workers, and
8 mechanics performing work under the contract. It shall also be
9 mandatory upon each subcontractor to cause to be inserted into
10 each lower tiered subcontract and into the project
11 specifications for each lower tiered subcontract a stipulation
12 to the effect that not less than the prevailing rate of wages
13 shall be paid to all laborers, workers, and mechanics
14 performing work under the contract. A contractor or
15 subcontractor who fails to comply with this subsection (b) is
16 in violation of this Act.

17 (b-1) When a contractor has awarded work to a subcontractor
18 without a contract or contract specification, the contractor
19 shall comply with subsection (b) by providing a subcontractor
20 with a written statement indicating that not less than the
21 prevailing rate of wages shall be paid to all laborers,
22 workers, and mechanics performing work on the project. A
23 contractor or subcontractor who fails to comply with this
24 subsection (b-1) is in violation of this Act.

25 (b-2) Where a complaint is made and the Department of Labor
26 determines that a violation has occurred, the Department of

1 Labor shall determine if proper written notice under this
2 Section 4 was given. If proper written notice was not provided
3 to the subcontractor by the contractor, the Department of Labor
4 shall order the contractor to pay any interest, penalties, or
5 fines that would have been owed by the subcontractor if proper
6 written notice were provided. The failure by a contractor to
7 provide written notice to a subcontractor does not relieve the
8 subcontractor of the duty to comply with the prevailing wage
9 rate, nor of the obligation to pay any back wages, as
10 determined under this Act. For the purposes of this subsection,
11 back wages shall be limited to the difference between the
12 actual amount paid and the prevailing rate of wages required
13 for the project. However, if proper written notice was not
14 provided to the contractor by the public body or other entity
15 under this Section 4, the Department of Labor shall order the
16 public body or other entity to pay any interest, penalties, or
17 fines that would have been owed by the subcontractor if proper
18 written notice were provided. The failure by a public body or
19 other entity to provide written notice does not relieve the
20 subcontractor of the duty to comply with the prevailing wage
21 rate, nor of the obligation to pay any back wages, as
22 determined under this Act. For the purposes of this subsection,
23 back wages shall be limited to the difference between the
24 actual amount paid and the prevailing rate of wages required
25 for the project. The failure to provide written notice by a
26 public body, other entity, or contractor does not diminish the

1 right of a laborer, worker, or mechanic to the prevailing rate
2 of wages as determined under this Act.

3 (c) A public body or other entity shall also require in all
4 contractor's and subcontractor's bonds that the contractor or
5 subcontractor include such provision as will guarantee the
6 faithful performance of such prevailing wage clause as provided
7 by contract or other written instrument. All bid specifications
8 shall list the specified rates to all laborers, workers and
9 mechanics in the locality for each craft or type of worker or
10 mechanic needed to execute the contract.

11 (d) If the Department of Labor revises the prevailing rate
12 of hourly wages to be paid by the public body or other entity,
13 the revised rate shall apply to such contract, and the public
14 body or other entity shall be responsible to notify the
15 contractor and each subcontractor, of the revised rate.

16 The public body or other entity shall discharge its duty to
17 notify of the revised rates by inserting a written stipulation
18 in all contracts or other written instruments that states the
19 prevailing rate of wages are revised by the Department of Labor
20 and are available on the Department's official website. This
21 shall be deemed to be proper notification of any rate changes
22 under this subsection.

23 (e) Two or more investigatory hearings under this Section
24 on the issue of establishing a new prevailing wage
25 classification for a particular craft or type of worker shall
26 be consolidated in a single hearing before the Department. Such

1 consolidation shall occur whether each separate investigatory
2 hearing is conducted by a public body or the Department. The
3 party requesting a consolidated investigatory hearing shall
4 have the burden of establishing that there is no existing
5 prevailing wage classification for the particular craft or type
6 of worker in any of the localities under consideration.

7 (f) It shall be mandatory upon the contractor or
8 construction manager to whom a contract for public works is
9 awarded to post, at a location on the project site of the
10 public works that is easily accessible to the workers engaged
11 on the project, the prevailing wage rates for each craft or
12 type of worker or mechanic needed to execute the contract or
13 project or work to be performed. In lieu of posting on the
14 project site of the public works, a contractor which has a
15 business location where laborers, workers, and mechanics
16 regularly visit may: (1) post in a conspicuous location at that
17 business the current prevailing wage rates for each county in
18 which the contractor is performing work; or (2) provide such
19 laborer, worker, or mechanic engaged on the public works
20 project a written notice indicating the prevailing wage rates
21 for the public works project. A failure to post or provide a
22 prevailing wage rate as required by this Section is a violation
23 of this Act.

24 (Source: P.A. 96-437, eff. 1-1-10; 97-964, eff. 1-1-13.)

25 (820 ILCS 130/5) (from Ch. 48, par. 39s-5)

1 Sec. 5. Certified payroll.

2 (a) Any contractor and each subcontractor who participates
3 in public works shall:

4 (1) make and keep, for a period of not less than 3
5 years from the date of the last payment made before January
6 1, 2014 (the effective date of Public Act 98-328) and for a
7 period of 5 years from the date of the last payment made on
8 or after January 1, 2014 (the effective date of Public Act
9 98-328) on a contract or subcontract for public works,
10 records of all laborers, mechanics, and other workers
11 employed by them on the project; the records shall include
12 (i) the worker's name, (ii) the worker's address, (iii) the
13 worker's telephone number when available, (iv) the
14 worker's social security number, (v) the worker's
15 classification or classifications, (vi) the worker's gross
16 and net wages paid in each pay period, (vii) the worker's
17 number of hours worked each day, (viii) the worker's
18 starting and ending times of work each day, (ix) the
19 worker's hourly wage rate, (x) the worker's hourly overtime
20 wage rate, (xi) the worker's hourly fringe benefit rates,
21 (xii) the name and address of each fringe benefit fund,
22 (xiii) the plan sponsor of each fringe benefit, if
23 applicable, and (xiv) the plan administrator of each fringe
24 benefit, if applicable; ~~and~~

25 (2) no later than the 15th day of each calendar month
26 file a certified payroll for the immediately preceding

1 month with the public body in charge of the project. A
2 certified payroll must be filed for only those calendar
3 months during which construction on a public works project
4 has occurred. The certified payroll shall consist of a
5 complete copy of the records identified in paragraph (1) of
6 this subsection (a), but may exclude the starting and
7 ending times of work each day. The certified payroll shall
8 be accompanied by a statement signed by the contractor or
9 subcontractor or an officer, employee, or agent of the
10 contractor or subcontractor which avers that: (i) he or she
11 has examined the certified payroll records required to be
12 submitted by the Act and such records are true and
13 accurate; (ii) the hourly rate paid to each worker is not
14 less than the general prevailing rate of hourly wages
15 required by this Act; and (iii) the contractor or
16 subcontractor is aware that filing a certified payroll that
17 he or she knows to be false is a Class A misdemeanor. A
18 general contractor is not prohibited from relying on the
19 certification of a lower tier subcontractor, provided the
20 general contractor does not knowingly rely upon a
21 subcontractor's false certification. Any contractor or
22 subcontractor subject to this Act and any officer,
23 employee, or agent of such contractor or subcontractor
24 whose duty as such officer, employee, or agent it is to
25 file such certified payroll who willfully fails to file
26 such a certified payroll on or before the date such

1 certified payroll is required by this paragraph to be filed
2 and any person who willfully files a false certified
3 payroll that is false as to any material fact is in
4 violation of this Act and guilty of a Class A misdemeanor.
5 The public body in charge of the project shall keep the
6 records submitted in accordance with this paragraph (2) of
7 subsection (a) before January 1, 2014 (the effective date
8 of Public Act 98-328) for a period of not less than 3
9 years, and the records submitted in accordance with this
10 paragraph (2) of subsection (a) on or after January 1, 2014
11 (the effective date of Public Act 98-328) for a period of 5
12 years, from the date of the last payment for work on a
13 contract or subcontract for public works. The records
14 submitted in accordance with this paragraph (2) of
15 subsection (a) shall be considered public records, except
16 an employee's address, telephone number, and social
17 security number, and made available in accordance with the
18 Freedom of Information Act. The public body shall accept
19 any reasonable submissions by the contractor that meet the
20 requirements of this Section; and-

21 (3) identify and report to the public body in charge of
22 the project the number of hours worked by minorities and
23 females, as defined in the Business Enterprise for
24 Minorities, Females, and Persons with Disabilities Act,
25 for each craft or type of worker or mechanic needed to
26 execute the contract. Each contractor and subcontractor

1 shall provide this information on a certified payroll
2 report, or on a monthly manpower utilization report.

3 A contractor, subcontractor, or public body may retain
4 records required under this Section in paper or electronic
5 format.

6 (b) Upon 7 business days' notice, the contractor and each
7 subcontractor shall make available for inspection and copying
8 at a location within this State during reasonable hours, the
9 records identified in paragraph (1) of subsection (a) of this
10 Section to the public body in charge of the project, its
11 officers and agents, the Director of Labor and his deputies and
12 agents, and to federal, State, or local law enforcement
13 agencies and prosecutors.

14 (c) A contractor or subcontractor who remits contributions
15 to fringe benefit funds that are jointly maintained and jointly
16 governed by one or more employers and one or more labor
17 organizations in accordance with the federal Labor Management
18 Relations Act shall make and keep certified payroll records
19 that include the information required under items (i) through
20 (viii) of paragraph (1) of subsection (a) only. However, the
21 information required under items (ix) through (xiv) of
22 paragraph (1) of subsection (a) shall be required for any
23 contractor or subcontractor who remits contributions to a
24 fringe benefit fund that is not jointly maintained and jointly
25 governed by one or more employers and one or more labor
26 organizations in accordance with the federal Labor Management

1 Relations Act.

2 (d) No later than October 1 of each year, the following
3 State agencies shall submit a report to the General Assembly
4 compiling the total number of hours worked during the
5 immediately preceding fiscal year by minorities and females as
6 reported in accordance with subsection (a): the Illinois
7 Capital Development Board, Illinois Department of
8 Transportation, and Illinois State Toll Highway Authority.
9 This report shall be filed as provided in Section 3.1 of the
10 General Assembly Organization Act.

11 (Source: P.A. 97-571, eff. 1-1-12; 98-328, eff. 1-1-14; 98-482,
12 eff. 1-1-14; 98-756, eff. 7-16-14.)